



October 5, 2000

Ms. Margaret A. Roll
Assistant General Counsel
Texas Department of Human Services
P.O. Box 149030
Austin, Texas 78714-9030

OR2000-3829

Dear Ms. Roll:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 139772.

The Texas Department of Human Services (the “department”) received a written request for records pertaining to the requestor’s termination of employment with the department. You contend that the requested information is excepted from disclosure pursuant to sections 552.101 and 552.108 of the Government Code.

You state that although the department received the records request on July 14, 2000, you did not request a decision from this office regarding this matter until July 31, 2000. We therefore conclude that you failed to request a decision from this office within ten business days of receipt of the original records request.

Section 552.301(a) of the Government Code requires a governmental body to release requested information or to request a decision from the attorney general within ten business days of receiving a request for information the governmental body wishes to withhold unless there has been a previous determination that the requested information is excepted from required public disclosure. When a governmental body fails to comply with the requirements of section 552.301, the information at issue is presumed public. Gov’t Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publishing Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The governmental body must show a compelling reason to withhold the information to overcome this presumption. Gov’t Code § 552.302; *see also Hancock*, 797 S.W.2d at 381.

In this instance, we believe that you have made a compelling demonstration that the information at issue must be withheld from the public pursuant to the “law-enforcement exception,” section 552.108 of the Government Code. Specifically, you have provided this office with correspondence from both the county and district attorneys of Kleberg County stating that the records at issue directly pertain to pending criminal investigations. This office has previously held that the need of another governmental body to withhold requested information may provide a compelling reason for nondisclosure under section 552.108. *See* Open Records Decision No. 586 (1991). Because both the county and district attorneys argue that the release of the requested information at this time would interfere with the prosecution of this case, we conclude that the department may withhold the information at issue in its entirety pursuant to section 552.108 of the Government Code.¹ *See* Open Records Decision Nos. 474 (1987), 372 (1983) (“law-enforcement exception” may be invoked by any proper custodian of information that relates to criminal incident).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body’s intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general’s Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

¹Because we resolve your request under section 552.108, we need not address the applicability of the other exception you raised.

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script that reads "Amanda Crawford".

Amanda Crawford
Assistant Attorney General
Open Records Division

AEC/RWP/ljp

Ref: ID# 139772

Encl. Submitted documents

cc: Mr. Adan Zamora, Jr.
P.O. Box 291
Kingsville, Texas 78363
(w/o enclosures)